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Trophy Hunting – A Relic of the Past

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A “biological annihilation” of wildlife in recent decades indicates that a sixth mass extinction in Earth’s history is under way and that it is more severe than previously feared.¹ Wildlife is dying out due to habitat destruction, overhunting, toxic pollution, invasion by alien species, and climate change.² But the ultimate cause of all these factors is “human overpopulation and continued population growth, and overconsumption, especially by the rich.”³ In such times, the practice of trophy hunting—the killing of big game for mounted

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¹ Gerardo Ceballos et al., *Biological Annihilation Via the Ongoing Sixth Mass Extinction Signaled by Vertebrate Population Losses and Declines*, 114 PROC. NAT’L ACAD. SCI. E6089, E6089 (July 10, 2017), <https://www.pnas.org/content/pnas/114/30/E6089.full.pdf>.

² *Id.*

³ *Id.*

body parts or photos with the killed animal, often in Africa—has become questionable, at best, from an ecosystemic point of view. The issue seems obvious: you do not save rare animals by shooting them. Yet, trophy hunters still argue that this is just the case.⁴ They claim that their hunts help raise awareness about species extinction and that hunting permit fees help conservation efforts and contribute to local economies.⁵ Conservationists point out that these arguments are not based on solid proof; that trophy hunting fails to account for the fact that rare animals have a much higher value alive than dead;⁶ and not to mention the obvious interest of the vast majority of people,⁷ even many of the hunters themselves have an interest in safeguarding rare species of animals for the long run.⁸

This Article argues that the hunting of endangered and threatened species for mere “sport” should be outlawed and that the transborder transportation of parts of trophy-hunted animals should be more closely examined and restricted than what is currently the case. If in the future, very threatened and endangered species are brought back from the brink of virtual or possible extinction, or if reliable studies come to show that trophy hunting truly does contribute to species conservation, which is currently not the case, the practice could be reintroduced—although the moral objections against big game hunting would still remain. This Article will analyze both the arguments for and against trophy hunting. It does, however, operate from the angle understood and shared by most people today: that killing majestic, rare animals for fun and display on walls in the homes of trophy hunters or in their photo

⁴ See, e.g., Amy Dickman, *Ending Trophy Hunting Could Actually Be Worse for Endangered Species*, CNN (Jan. 4, 2018, 8:21 AM), <https://www.cnn.com/2017/11/24/opinions/trophy-hunting-decline-of-species-opinion-dickman/index.html>; Ryan McMaken, *Trophy Hunting Saves Endangered Species*, MISES INST. (Nov. 20, 2017), <https://mises.org/power-market/trophy-hunting-saves-endangered-species>; Ben Graham, *Could Trophy Hunting Be Saving Rhinos, Elephants and Lions?*, NEWS.COM.AU (Nov. 21, 2017, 10:09 AM), <https://www.news.com.au/travel/worldtravel/africa/could-trophy-hunting-be-saving-rhinoselephants-and-lions/news-story/befd8467aacc891d4aa64c9cf4619abb>.

⁵ See, e.g., Adam Cruise, *CAT – The Effects of Trophy Hunting on Five of Africa’s Iconic Wild Animal Populations in Six Countries – Analysis*, CONSERVATION ACTION TRUST (Jan. 2016), <https://conservationaction.co.za/resources/reports/effects-trophy-hunting-five-africas-iconic-wild-animal-populations-six-countries-analysis>.

⁶ John R. Platt, *Elephants Are Worth 76 Times More Alive Than Dead: Report*, SCI. AM. (Oct. 8, 2014), <https://blogs.scientificamerican.com/extinction-countdown/elephants-are-worth-76-times-more-alive-than-dead-report>.

⁷ *Most U.S. Adults Oppose Trophy Hunting*, POLL-VAULTER (Nov. 21, 2017), <https://www.poll-vaulter.com/most-u-s-adults-oppose-trophy-hunting>.

⁸ *Id.*

albums is scientifically, economically, and perhaps especially, morally objectionable.

This Article first describes the remaining numbers of the affected, trophy-hunted animals that are at the center of this Article. As some conflate trophy hunting and poaching, which are two different issues albeit featuring some overlap, the Article defines these concepts and explains the overlap before setting forth the law and policy governing trophy hunting. The Article does not attempt to analyze or address the poaching problem any further. A major argument for allowing trophy hunting is that it contributes to conservation efforts. This argument does not withstand close scrutiny. Many experts have concluded that the frequently asserted benefits of trophy hunting are questionable, at best. Further, trophy-hunted species are worth more alive than dead from an ecosystem services standpoint, as ecotourism facilitators, and because of their inherent, existence values. These crucial issues will be examined in some depth. For relative brevity, the Article will explain, but not seek to exhaust, issues related to the negative effects of trophy hunting on animal gene pools and the consumption of trophy-hunted animals as a factor in relation to food insecurity in some countries. Modernly, trophy hunting has become objectionable to most people for moral and ethical reasons. The Article concludes that since the asserted benefits of trophy hunting on conservation are far from certain and because most people have come to disfavor trophy hunting, the practice should be discontinued in a modern, democratic society. The Article does not opine on hunting in general. It solely addresses threatened and endangered species as well as, to a lesser extent, the problem of removing potentially important specimens from the gene pool of their species.

I THE HARD FACTS

While this debate continues to rage, the world's grandest and most threatened animals are disappearing rapidly. In 1900, for example, there were about half a million rhinos in the world.⁹ Today, less than thirty thousand exist.¹⁰ In the early part of the twentieth century, there

⁹ Murithi Mutiga, *At Home with the World's Last Male Northern White Rhinoceros*, THE GUARDIAN (Apr. 27, 2015), <https://www.theguardian.com/environment/2015/apr/27/ol-pejeta-kenya-sudan-worlds-last-male-northern-white-rhinoceros>.

¹⁰ *Rhino Info*, SAVE THE RHINO, <https://www.savetherhino.org/rhino-info/population-figures> (last visited Feb. 23, 2019).

were as many as three to five million African elephants.¹¹ Now, there are only about 415,000 left, with tens of thousands being slaughtered every year.¹² Between 2010 and 2012 alone, forty-thousand elephants were killed by poachers.¹³ On average, one elephant is currently killed every twenty-five minutes.¹⁴ In just one decade, the Central African elephant population has declined by 64%.¹⁵ Other species fare no better. Once the “King of the Animal Kingdom,” the African lion population has declined from about one hundred thousand in the 1960s to no more than thirty-five thousand today.¹⁶ Since 1970, a whopping 80% of all wild animals have been lost to poachers, hunters, human wildlife interaction, and habitat loss.¹⁷ The numbers change so rapidly that by the time this article has been published, the just-mentioned ones will likely have changed for the worse.

These numbers are sobering; we are in the midst of a sixth mass extinction, losing species at one thousand to ten thousand times the natural rate.¹⁸ As many as 30–50% of all species may be extinct by 2050.¹⁹ Even so, trophy hunting continues. Many of the targeted animal species are highly endangered or threatened with extinction. For example, despite the low and declining population of African lions, American hunters killed more than 5,600 of these majestic animals and

¹¹ *African Elephants*, WORLD WILDLIFE FUND, http://wwf.panda.org/what_we_do/endangered_species/elephants/african_elephants/ (last visited Feb. 23, 2019).

¹² Paul Steyn, *African Elephant Numbers Plummet 30 Percent, Landmark Survey Finds*, NAT'L GEOGRAPHIC (Aug. 31, 2016), <https://news.nationalgeographic.com/2016/08/wildlife-african-elephants-population-decrease-great-elephant-census>.

¹³ Nicole Skinner, *African Elephant Numbers Collapsing*, NATURE: INT'L J. OF SCI. (Aug. 19, 2014), <https://www.nature.com/news/african-elephant-numbers-collapsing-1.15732>.

¹⁴ Tanya Steele, *An African Elephant Killed Every 25 Minutes – Why the UK Must Shut Down Its Ivory Trade*, HUFFINGTON POST UK (June 2, 2017, 10:13), https://www.huffingtonpost.co.uk/tanya-steele/an-african-elephant-killed_b_14631030.html.

¹⁵ Wittemyer et al., *Illegal killing for ivory drives global decline in African elephants*, PROC. NAT'L ACAD. SCI. U.S. (Sept. 9, 2014).

¹⁶ Renate Nimtz-Koester, *King No More: The Tragic Plight of Lions in Africa*, SPIEGEL ONLINE (May 10, 2013, 12:51 PM), <http://www.spiegel.de/international/world/lion-populations-in-africa-decline-amid-hunting-and-habitat-loss-a-898955.html>.

¹⁷ TROPHY (CNN 2018).

¹⁸ *The Extinction Crisis*, CENTER FOR BIOLOGICAL DIVERSITY, https://www.biologicaldiversity.org/programs/biodiversity/elements_of_biodiversity/extinction_crisis (last visited Feb. 23, 2019).

¹⁹ *Id.*

imported parts of them as trophies between 1999 and 2008.²⁰ Between 2005 and 2014, more than 1.2 million “trophies” of more than 1,200 different kinds of animals were imported into the United States.²¹ Because it is typically illegal to import actual parts of the animals, trophy hunters often resort to taking a picture of themselves with the animals they have just killed as a means of commemorating the occasion, commonly referred to as a kill shot.

II

TROPHY HUNTING AND POACHING: TWO SEPARATE YET INTERRELATED ISSUES

As a threshold matter, it should be noted that the rhetoric surrounding rare species occasionally conflates trophy hunting with poaching. To be clear, trophy hunting is not the same as poaching.²² These are two different issues that should not be addressed as one. Poaching presents a huge problem to the survival of many species and even threatens the stability and security of countless human communities around the world.²³ Nonetheless, in both trophy hunting and poaching rare animals end up dead. While poaching is, by the numbers, the biggest of the threats to threatened and endangered animals,²⁴ trophy hunting also “removes a significant number of animals from these rapidly declining populations.”²⁵ Experts also question whether trophy hunting is, at least in some cases, a disguise for the illegal hunting of big game.²⁶ As the death of “Cecil the Lion”

²⁰ John R. Platt, *African Lions Move Closer to U.S. Endangered Species Act Protection*, SCI. AM. (Nov. 27, 2012), <https://blogs.scientificamerican.com/extinction-countdown/african-lions-move-closer-endangered-species-act-protection>.

²¹ *U.S. Imported More than 1.2 Million Wildlife Trophies in Last Ten Years, Having Dire Impact on World's Wildlife*, HUMANE SOC'Y (Feb. 8, 2016), http://www.humanesociety.org/news/press_releases/2016/02/us-imported-12m-trophies-020816.html.

²² *When Is It Hunting and When Is It Poaching?*, BBC NEWS (July 29, 2015), <https://www.bbc.com/news/world-africa-33699347>.

²³ Jacey Fortin, *Why Wildlife Poaching Is a Big Problem, Even If You Don't Care About Rhinos*, INT'L BUS. TIMES (Dec. 12, 2012), <https://www.ibtimes.com/why-wildlife-poaching-big-problem-even-if-you-dont-care-about-rhinos-934396>.

²⁴ See, e.g., *Poaching and Farmers Pose Bigger Threat to Lions than Trophy Hunting*, RESEARCHGATE (Aug. 4, 2015), <https://www.researchgate.net/blog/post/poaching-and-farmers-pose-bigger-threat-to-lions-than-trophy-hunting>; Raúl M. Grijalva & Nat. Res. Comm. Democrats, *Missing the Mark: African Trophy Hunting Fails to Show Consistent Conservation Benefits 2* (June 13, 2016), <https://naturalresources.house.gov/imo/media/doc/Missing%20the%20Mark%20Final.pdf> [hereinafter Grijalva].

²⁵ Grijalva, *supra* note 24, at 5.

²⁶ *Id.* at 20.

showed, trophy hunters do not always play by the rules.²⁷ There is a real concern that legal hunting provides cover for illegal hunting when rangers might not know who is who in a situation with trucks, guns, and several hunters on the scene. Other experts similarly find that, in practice, trophy hunting encourages hunters and guides to break the law, engenders corruption, and serves as a cover for poaching and other illegal activities.²⁸ Every killing of a rare animal arguably poses an extinction problem when some species population numbers are as small as they are.

Some of the trophy hunters and local operations that assist them present the situation as entirely black and white: if the moratorium on the import of trophies to the United States is not lifted, legitimate operations will go out of business and poachers will simply kill all the rare species.²⁹ This is far from a realistic impression of the situation. It might be true that poaching presents a big—probably the biggest—threat to rare species.³⁰ Others have found that in some countries “trophy hunting appears to be the primary driver of lion population declines outside protected areas.”³¹

Still, poaching remains a separate issue that local and international authorities are trying to solve as well. Poaching is caused by a variety of factors, including poverty.³² The American ban on import of trophies from some species is far from the only reason why poaching presents such a problem—in fact, it is not even the major reason for this at all. Attempting to couch trophy hunting as an issue of “poaching or not” is simply greenwashing an issue that is much more complex.

China, long the worst offender in relation to ivory, has finally agreed to begin to shut down their ivory markets because of the rarity of elephants and the persistent poaching problem.³³ It makes little, if any,

²⁷ *Id.* at 11.

²⁸ Karen E. Lange, *The Vanishing: How Trophy Hunting is Pushing Lions to the Brink of Extinction* (Jan. 1, 2016), <https://www.humanesociety.org/news/trophy-hunting-devastation>.

²⁹ See, e.g., TROPHY, *supra* 17.

³⁰ See Fortin, *supra* note 23.

³¹ Grijalva, *supra* note 24, at 5.

³² See Rolf D. Baldus, *Poaching in Africa: Facts, Causes, and Solutions*, AFRICAN INDABA, May 2014, at 6, 7, <http://www.africanindaba.com/wp-content/uploads/2014/07/AfricanIndabaVol12-3.pdf>.

³³ See, e.g., Peter Canby, *China and the Closing of the Ivory Trade*, THE NEW YORKER (June 12, 2017), <https://www.newyorker.com/news/news-desk/china-and-the-closing-of-the-ivory-trade>; Rachael Bale, *China Shuts Down Its Legal Ivory Trade*, NAT'L

sense to argue that Western hunters with money to spare should be allowed to do what we ask other nations *not* to do; namely to kill rare species potentially at the brink of extinction.³⁴

III

LAW AND POLICY GOVERNING RARE ANIMALS

Internationally, the Convention on International Trade in Endangered Species (CITES) governs the protection of, and trade in, species that are threatened with extinction or that may become so unless legal protections are implemented.³⁵ “The backbone of CITES is the permit system that facilitates international cooperation in conservation and trade monitoring of CITES-listed species. Permits are issued only if a country’s Management and Scientific Authorities determine that trade is legal and does not threaten the species’ survival.”³⁶ Two appendices specify the trade activities that can be undertaken between individuals and companies. Appendix II includes species “which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.”³⁷ The language is intended to catch species that are not currently at risk of imminent extinction but are traded across international borders to such an extent that the trade could rise to a level incompatible with their survival if not managed appropriately.³⁸ Appendix II species may thus be traded internationally, but only if

GEOGRAPHIC (Dec. 30, 2017), <https://news.nationalgeographic.com/2017/12/wildlife-watch-china-ivory-ban-goes-into-effect/>.

³⁴ See, e.g., Benjamin Haas, *Under Pressure: The Story Behind China’s Ivory Ban*, THE GUARDIAN (Aug. 29, 2017), <https://www.theguardian.com/environment/2017/aug/29/story-behind-china-ivory-ban> (“The premier had meetings with many foreign leaders, and every time they would bring up this issue [of ivory]. . . . Amid multiple open letters from celebrities and campaigners, even Prince William urged Chinese president Xi Jinping to end the ivory trade during a state visit in 2015. . . . International pressure from African countries, from European countries and ultimately from the US was intense and directly led to China adopting a total ban.”).

³⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora art. II, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243, <https://treaties.un.org/doc/publication/unts/volume%20993/volume-993-i-14537-english.pdf> [hereinafter CITES].

³⁶ Claire Hood, *CITES 101: Understanding Appendices, CoPs and Permits*, FISH & WILDLIFE NEWS 14 (Winter 2013), <https://www.fws.gov/international/cites/cop16/fws-news-spotlight-on-cites.pdf>.

³⁷ CITES, *supra* note 35.

³⁸ Annecoos Wiersema, *Incomplete Bans and Uncertain Markets in Wildlife Trade*, 12 U. PA. ASIAN L. REV. 65, 69 (2016).

accompanied by appropriate export permits issued by a national Management and Scientific Authority.³⁹ No import permits are required.

Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only “in exceptional circumstances.”⁴⁰ Import and export permits must be granted, both of which require state agencies to make “non-detriment findings” (NDFs) before allowing any export and import.⁴¹ In addition to the requirement for NDFs, the import permit requires that the “specimen is not to be used for primarily commercial purposes.”⁴² As a result of this requirement, Appendix I is virtually a complete ban on international trade in that species and parts of that species.⁴³

The United States is a party to CITES.⁴⁴ The United States Fish and Wildlife Service (FWS) implements the provisions of the treaty under the Endangered Species Act (ESA).⁴⁵ Under the ESA, species may be listed as either endangered or threatened.⁴⁶ “Endangered” means that a species is “in danger of extinction throughout all or a significant portion of its range.”⁴⁷ “Threatened” means that a species is “likely to become endangered within the foreseeable future” regardless of the country where the species is found.⁴⁸ Species may be listed as either threatened or endangered because of several different factors, among them habitat destruction; overutilization for commercial, recreational, scientific, or educational purposes; and the inadequacy of existing regulatory mechanisms.⁴⁹ ESA protections apply to species found both inside and outside the United States.⁵⁰ However, as with most federal laws, there

³⁹ CITES, *supra* note 35.

⁴⁰ *Id.*

⁴¹ *Id.* at art. III.

⁴² *Id.*

⁴³ Wiersema, *supra* note 38.

⁴⁴ CITES, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/international/cites> [<https://perma.cc/75L6-XSP7>].

⁴⁵ *Id.*

⁴⁶ 16 U.S.C.A. § 1533(a)(1) (West 2018).

⁴⁷ *Endangered Species Act: Overview*, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/endangered/laws-policies> [<https://perma.cc/R4LD-8BFL>].

⁴⁸ *Id.*; *Foreign Species: Overview*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/endangered/what-we-do/foreign-species.html> [<https://perma.cc/2CL9-CGPJ>].

⁴⁹ 16 U.S.C.A. § 1533(a).

⁵⁰ *See, e.g.*, 16 U.S.C.A. § 1533.

is a presumption that the ESA has no extraterritorial effect.⁵¹ Thus, the ESA will not apply to trophy hunting performed purely within another nation. In other words, American hunters can legally kill endangered animals *outside* the United States as long as they do not bring back any parts of the animal to the United States.⁵² That is what happened in the case of, for example, “Cecil the Lion” in 2015.⁵³

Trophies from endangered or threatened animals hunted overseas may, however, be imported into the United States by special permit if the FWS determines that the killing of the trophy animal will “enhance” the survival of the species.⁵⁴ In comparison, European Union authorities will only issue import permits if the animals are hunted legally and the import is not “detrimental” to the species.⁵⁵ However, in the case of some species such as rhinos, elephants, and lions, permits will only be issued to European citizens if “significant and tangible conservation benefits” will ensue.⁵⁶

Over time, the FWS has gone back and forth on whether trophy hunting actually enhances species survival in countries such as Zimbabwe and Zambia. In 2014, for example, the FWS found this *not* to be the case.⁵⁷ The FWS pointed out that the elephant population of

⁵¹ See, e.g., Paul Boudreaux, *Biodiversity and a New “Best Case” for Applying the Environmental Statutes Extraterritorially*, 37 ENVTL. L. 1107, 1128 (2007) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 588 (1992)).

⁵² 16 U.S.C.A. § 1538 (West 2018); see also *Listing and Critical Habitat: Overview*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/endangered/what-we-do/listing-overview.html> (last updated Dec. 6, 2018).

⁵³ See, e.g., Myanna Dellinger, *Trophy Hunting Contracts: Unenforceable for Reasons of Public Policy*, 41 COLUM. J. ENVTL. L. 396, 396 (2016).

⁵⁴ 50 C.F.R. § 17.40(e)(6)(i)(B) (2018); 50 C.F.R. § 17.31(a) (2018). Under CITES, endangered Appendix I species may be shipped internationally only if both the importing and exporting countries grant permits subject to strict conditions. For threatened Appendix II species, CITES only requires the exporting country to issue a permit. Permits to import and export parts of these species may, however, only be issued if the nations make a finding that trade in the species is “not detrimental to the survival of the species involved.” CITES art. III(3)(a). However, as the CITES rules are a floor, not a ceiling, for species protections, individual nations may adopt stricter domestic measures. The United States has done so by requiring that imports of parts of animals are not only not “detrimental” to the survival of the species, but actually “enhance” their survival.

⁵⁵ Amelia Knapp, *A Review of the European Union’s Import Policies for Hunting Trophies* 5, 8 (2007), <https://www.traffic.org/site/assets/files/10078/eu-import-policies-for-hunting-trophies.pdf>.

⁵⁶ *Id.* at 62.

⁵⁷ *The U.S. Fish and Wildlife Service’s Plan to Implement a Ban on the Commercial Trade in Elephant Ivory Before the Subcomm. on Fisheries, Wildlife, Oceans & Insular Affairs of the H. Comm. on Nat. Res.*, 113th Cong. 17 (2014) [hereinafter *Commercial Trade in Elephant Ivory*].

Zimbabwe, a popular trophy hunting destination, dropped from 84,416 elephants in 2007 to 47,366 elephants in 2012—a span of just five years—*despite* arguments that trophy hunting helps save the species.⁵⁸ The FWS also noted that the information relied on by Zimbabwe and other trophy hunting proponents, including from the pro hunting group the Safari Club International, was outdated and lacked reliable information regarding wildlife management plans, anti-poaching efforts, and regulation of elephant hunting.⁵⁹ When suspending the import of elephant trophies from the two nations, the FWS noted that

questionable management practices, a lack of effective law enforcement and weak governance have resulted in uncontrolled poaching and catastrophic population declines of African elephants in Tanzania. In Zimbabwe, available data, though limited, indicate a significant decline in the elephant population. . . . Given the current situation on the ground in both Tanzania and Zimbabwe, the Service is unable to make positive findings required under . . . CITES and the Endangered Species Act to allow import of elephant trophies from these countries. *Additional killing of elephants in these countries, even if legal, is not sustainable and is not currently supporting conservation efforts that contribute towards the recovery of the species.*⁶⁰

This agency decision led to litigation on procedural grounds that have still not been fully resolved.⁶¹

Similarly, in connection with a rule listing two African lion subspecies as endangered and threatened in 2016, the FWS recognized the “large degree of uncertainty” that surrounds the viability of trophy hunting.⁶² The FWS noted that lion and other experts have identified several factors that undermine the sustainability of trophy hunting.⁶³ The FWS also recognized that threats to the species may well be “worse than previously indicated.”⁶⁴

⁵⁸ Letter to file from Chief, Branch Permits, *Enhancement Finding for African Elephants Taken as Sport-Hunted Trophies in Zimbabwe During 2014* (Apr. 17, 2014), <https://www.fws.gov/international/pdf/enhancement-finding-April-2014-elephant-Zimbabwe.PDF>.

⁵⁹ *Commercial Trade in Elephant Ivory*, *supra* note 57.

⁶⁰ *Press Release: Service Suspends Import of Elephant Trophies from Tanzania and Zimbabwe*, U.S. FISH & WILDLIFE SERV. (Apr. 4, 2014), <https://www.fws.gov/news/ShowNews.cfm?ID=2E6FF2A2-E10F-82BC-DAE08807810E3C6B> (emphasis added).

⁶¹ See *Safari Club Int'l. v. Zinke*, 878 F.3d 316 (D.C. Cir. 2017).

⁶² Listing Two Lion Subspecies, 80 Fed. Reg. 80,000, 80,005, 80,016–23 (Dec. 23, 2015) (discussing potential benefits and impacts of trophy hunting) (subsequently codified at 50 C.F.R. § 17.11(h)).

⁶³ *Id.* at 80,000.

⁶⁴ *Id.*

However, in 2017, the FWS reversed course under the new political administration and announced that trophies from the legal hunting of elephants in Zimbabwe and Zambia could, once again, be imported into the United States.⁶⁵ After much public outrage about this decision, which was announced by the hunting organization Safari Club International, President Donald Trump tweeted that he would reimpose the import ban, calling trophy hunting a “horror show.”⁶⁶ In March 2018, FWS nonetheless announced guidelines allowing the import of elephant trophies from ESA-listed species on a case-by-case basis.⁶⁷ Although it is still illegal to import trophies from Zimbabwe and Zambia, permits are granted to hunt for elephants and lions elsewhere in Africa.⁶⁸ It is also still legal to kill black rhinos in Namibia with the purchase of a permit, even though they have been listed as critically endangered.⁶⁹ Similarly, trophy hunting is legal and common in South Africa.⁷⁰

However, instead of discussing solutions in relation to individual nations and animals, the time has come to reach a solution on whether trophy hunting should be discontinued on a larger scale. The current flip-flopping in this area poses a risk of creating misconceptions regarding the legal status of trophy hunting imports when—from an ecosystemic point of view—time is running out for such continued ad hoc discussions. The constant government flip-flopping on this issue

⁶⁵ See Randy Gibbs, *Africa Response to Elephant Import Ban*, SAFARI CLUB INT’L (Nov. 22, 2017), <https://www.safariclub.org/news/africa-response-elephant-import-ban>.

⁶⁶ Donald Trump (@realDonaldTrump), TWITTER (Nov. 19, 2017, 3:57 PM), <https://twitter.com/realDonaldTrump/status/932397369655808001>.

⁶⁷ Memorandum from Principal Deputy Dir., U.S. Fish & Wildlife Serv., to Assistant Dir., Int’l Affairs, U.S. Fish & Wildlife Serv. on Withdrawal of Certain Findings for ESA-listed Species Taken as Sport-hunted Trophies (Mar. 1, 2018), <https://www.fws.gov/international/pdf/memo-withdrawal-of-certain-findings-ESA-listed-species-sport-hunted-trophies.pdf>; see also Nick Visser & Chris D’Angelo, *Trump Administration Reverses Promise to Ban Elephant Hunt Trophies*, HUFFINGTON POST (Mar. 6, 2018), https://www.huffingtonpost.com/entry/trump-administration-elephant-trophies_us_5a9e218ee4b0a0ba4ad7376b.

⁶⁸ Adam Cruise, *American Trophy Hunters Condemn South African Lion Hunting*, CONSERVATION ACTION TRUST (Jan. 15, 2018), <https://conservationaction.co.za/media-articles/american-trophy-hunters-condemn-south-african-lion-hunting/>.

⁶⁹ Jon Herskovitz, *Permit to Hunt Endangered Rhino Sells for \$350,000 Despite Protests*, REUTERS (Jan. 11, 2014, 8:56 PM), <https://www.reuters.com/article/us-usa-rhino-auction/permit-to-hunt-endangered-rhino-sells-for-350000-despite-protests-idUSBREA0B02720140112>.

⁷⁰ Tom Head, *Elephant Populations are Down 30% in the Last 10 Years: So Why Is Hunting Them Still Allowed?*, THE S. AFRICAN (Nov. 28, 2017, 12:52), <https://www.thesouthafrican.com/elephant-population-under-threat-why-is-hunting-them-still-legal/>.

adds needless confusion and frustration, which is counterproductive to solving the underlying, urgent problem.

In the United States, endangered species cannot, as a general rule, be hunted legally. Species such as grizzly bears, wolves, and whooping cranes enjoy protections under the ESA in at least parts of the nation, although their status is currently hotly contested by interested parties including hunters and conservationists, leading to even more litigation.⁷¹ Other species such as bighorn sheep, bears, and mountain lions may, however, be hunted legally in several states, albeit with some restrictions.⁷² Even hibernating bears may now be killed legally after the Trump administration signed new legislation.⁷³ Although some trophy-hunted species in the United States are, technically, not threatened with extinction, killing the most prominent of their members still presents a genetic problem to the species, as will be described below.

The Fish and Wildlife Service has attempted to allow broad conservation hunting of certain listed species in the United States, but

⁷¹ Nate Hegyi, *Judge Restores Grizzly Bears' Protections As Endangered Species*, NPR (Sep. 24, 2018, 10:20 PM), <https://www.npr.org/2018/09/24/651335449/judge-restores-grizzly-bears-protections-as-endangered-species>; *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999, 1021 (D. Mont. 2018) (vacating the June 30, 2017 Final Rule of the U.S. Fish & Wildlife Service delisting the Greater Yellowstone grizzly bears' ESA status), *appeal docketed*, No. 18-36050 (9th Cir. Dec. 17, 2018); *Conserving the Nature of America: Gray Wolf (Canis Lupus)*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/home/wolfrecovery/> (last visited Dec. 24, 2018); Mark D. Kaufman, *Wolves Are Targets in the Endangered Species Act "Modernization,"* SCIENCELINE: ENV'T (May 3, 2017), <https://scienceline.org/2017/05/wolves-targets-endangered-species-act-modernization/>; *Species Profile for Whooping Crane (Grus Americana)*, U.S. FISH & WILDLIFE SERV.: ENVTL. CONSERVATION ONLINE SYS., <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=B003> (last visited Dec. 24, 2018).

⁷² See, e.g., *Bighorn Sheep Hunting*, CAL. DEP'T OF FISH & WILDLIFE, <https://www.wildlife.ca.gov/Hunting/Bighorn-Sheep> (last visited Dec. 24, 2018); *2018–2019 New Mexico Hunting Rules & Info*, N.M. DEP'T OF GAME & FISH 95 (2018), http://www.wildlife.state.nm.us/download/publications/rib/2018/hunting/2018_19-New-Mexico-Hunting-Rules-and-Info.pdf; Brian Maffly, *After Poaching a Desert Bighorn in Utah, Prominent Arizona Guide Loses Hunting Rights in 47 States*, SALT LAKE TRIB. (Jan. 23, 2018), <https://www.sltrib.com/news/2018/01/23/prominent-arizona-guide-loses-hunting-rights-in-47-states-for-poaching-a-desert-bighorn-in-utah/>; *Montana Guided Mountain Lion Hunts*, SWAN MOUNTAIN OUTFITTERS, <https://www.swanmountainoutfitters.com/trip/montana-guided-mountain-lion-hunts/> (last visited Dec. 26, 2018).

⁷³ Niamh McIntyre, *Donald Trump Makes it Legal to Shoot Hibernating Bears*, INDEPENDENT (April 8, 2017), <https://www.independent.co.uk/news/world/americas/donald-trump-hibernating-bears-legal-repeal-obama-ban-hunting-alaska-ronald-young-environmental-a7673686.html>.

courts have so far soundly rejected these arguments.⁷⁴ However, in 2017, despite overwhelming opposition from the general public and dozens of tribal nations, the Yellowstone grizzly bear population was removed from the Endangered Species list after more than forty years of protection.⁷⁵ The grizzly bears' "management" was turned over to the Yellowstone states.⁷⁶ Less than a year later, Wyoming and Idaho planned trophy hunts.⁷⁷ Montana, the third Yellowstone management state, took a more conservationist approach and refused to allow a 2018 hunt.⁷⁸ In late September 2018, a federal court ruling placed the Yellowstone grizzly bear population back on the Endangered Species list.⁷⁹ Despite the legal flux in this area, it is deeply ironic that if elephants, rhinos, leopards, or other trophy-hunted animals were native to the United States, they could *not* be hunted here. Yet when these hunts take place overseas, they are often legal. Where hunters are not allowed to bring the actual trophies home, they can take and publicize photos depicting the killed animals as mere objects of the hunters' personal desires. Many consider this to be undignified and outright unethical in times when so few of the killed animals remain. Depicting such animals as mere objects of fun for the lucky few may be even more detrimental from a public policy perspective, as many people can see the pictures of the killed animals online and in other media. This is not a situation that should be normalized that way. Rare animals are not and should not be objects of entertainment for wealthy individuals.

Some may argue that the apparent flip-flopping on the legality of importing animal trophies into the United States depends on who is president. This is not necessarily the case. For example, although the Obama administration is often credited with banning the import of

⁷⁴ Dan Ashe, *We Can Conserve Elephants Without Hunting Them*, ASS'N ZOOS & AQUARIUMS (Jan. 4, 2018), <https://www.aza.org/from-the-desk-of-dan-ashe/posts/statement-by-dan-ashe-on-elephant-trophy-import-ban>.

⁷⁵ Bonnie Rice, *Wyoming's Extreme Grizzly Bear Trophy Hunting Proposal Threatens Recovery*, SIERRA CLUB (Apr. 11, 2018), <https://www.sierraclub.org/lay-of-the-land/2018/04/wyoming-s-extreme-grizzly-bear-trophy-hunting-proposal-threatens-recovery>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*; Chris D'Angelo, *Wyoming Greenlights Grizzly Bear Trophy Hunt*, HUFFINGTON POST: ENV'T (May 23, 2018, 4:24 PM), https://www.huffingtonpost.com/entry/wyoming-grizzly-hunt_us_5b05a514e4b07c4ea1045677.

⁷⁹ *Crow Indian Tribe v. United States*, No. 17-89-DLC, 2018 U.S. Dist. LEXIS 163319, 2018 WL 4568418 (D. Mont. Sept. 24, 2018) (vacating the June 30, 2017 Final Rule of the U.S. Fish & Wildlife Service delisting the Greater Yellowstone grizzly bears' ESA status), *appeal docketed*, No. 18-36050 (9th Cir. Dec. 17, 2018).

elephant trophies from Zimbabwe and Zambia,⁸⁰ the recent initial attempt to reverse the ban under the Trump watch resulted from analyses by career experts in the FWS. These experts are not politically appointed and are, at least theoretically, independent, objective, scientific, and professional.⁸¹ Laws and regulations should, and hopefully do, guide their actions.⁸² Their decisions are, of course, not infallible, and there is a real risk that the experts may succumb to political pressure from a President, other elected officials, or political appointees.⁸³ Indeed, some fear that political, ideological, and financial interests often undermine the use of science in federal decision-making, harming the public good in the process.⁸⁴ Further, agencies are often known to be “captured” by strong industries who wish to see regulations go in one direction or another, and thus these industries exert huge influence on the regulatory process via lobbying and other tactics.⁸⁵ For those inclined to maximize hunting, the theoretical conservation benefit of trophy hunting provides a convenient excuse to authorize the hunting of rare animals, even though there is scant evidence to support this theory. This theory may be supported by federal agencies that are unduly influenced by a given political administration.

The legal and political arguments in this context are convoluted, and the ongoing lawsuits are drawn out. Meanwhile, precious time goes by,

⁸⁰ See, e.g., Rachael Bale, *What the Ban on Elephant Trophies Means*, NAT'L GEOGRAPHIC (Nov. 17, 2017), <https://news.nationalgeographic.com/2017/11/wildlife-watch-trump-trophy-hunting-ban-tweet-elephants0/> (stating that the FWS had, under President Barack Obama, banned the import of elephant trophies from certain countries); Laurel Wamsley, *Trump Keeps Elephant Trophy Import Ban in Place, for Now*, NPR: THE TWO-WAY (Nov. 16, 2017, 7:23 PM), <https://www.npr.org/sections/thetwo-way/2017/11/16/564712084/u-s-lifts-ban-on-importing-elephant-trophies-from-zimbabwe-and-zambia> (discussing the lifting of the “Obama-era ban”).

⁸¹ See, e.g., U.S. Fish & Wildlife Serv., Div. of Policy, Performance, & Mgmt. Programs, Service Directives Part 022 FWM No. 327 on Creation, Authority, and Functions (Mar. 6, 1998), <https://www.fws.gov/policy/022fw1.html>; *Surveying the US Fish and Wildlife Service*, UNION OF CONCERNED SCIENTISTS: CTR. FOR SCI. & DEMOCRACY 1–4 (Aug. 2018), <https://www.ucsusa.org/sites/default/files/attach/2018/08/science-under-trump-fws.pdf> [hereinafter UNION FOR CONCERNED SCIENTISTS]; *About the U.S. Fish and Wildlife Service*, U.S. FISH & WILDLIFE SERV. (Oct. 16, 2018), https://www.fws.gov/help/about_us.html.

⁸² UNION OF CONCERNED SCIENTISTS, *supra* note 81, at 3.

⁸³ *Id.* at 2.

⁸⁴ *Id.* at 3.

⁸⁵ Will Baude, *Regulatory and Academic Capture*, WASH. POST: VOLOKH CONSPIRACY (May 18, 2014), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/18/regulatory-and-academic-capture/?noredirect=on&utm_term=.62a4887f2580.

time that we just do not have if we truly want to save these species before it is too late. Under the precautionary principle of law,

when human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment that is . . . serious and effectively irreversible, or inequitable to present or future generations, or imposed without adequate consideration of the human rights of those affected.⁸⁶

This principle is contained in article 15 of the Rio Declaration and adopted by consensus of the more than 170 nations, including the United States, at the 1992 United Nations Conference on Environment and Development.⁸⁷

The precautionary principle is highly relevant to species protection. Individual animals serve a function to their own species, other species, the environment in general, and thus also to ecosystem services to human beings.⁸⁸ The parties to the Rio Declaration were concerned about threats to the environment from numerous fronts.⁸⁹ In the years since Rio and Rio +20, species conservation has gained much

⁸⁶ WORLD COMM'N ON THE ETHICS OF SCI. KNOWLEDGE & TECH., PRECAUTIONARY PRINCIPLE 14 (2005), <http://unesdoc.unesco.org/images/0013/001395/139578e.pdf>.

⁸⁷ See U.N. Conference on Environment & Development, *Report of the United Nations Conference on Environment and Development Volume I: Resolutions Adopted by the Conference*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), U.N. Sales No. E.93.I.8 (1993), [http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.151/26/Rev.1%20\(Vol.%20I\)&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.151/26/Rev.1%20(Vol.%20I)&Lang=E).

⁸⁸ See, e.g., *Ecosystem Services*, NAT'L WILDLIFE FED'N, <https://www.nwf.org/Educational-Resources/Wildlife-Guide/Understanding-Conservation/Ecosystem-Services> (last visited Dec. 30, 2018); NAT'L RESEARCH COUNCIL COMM. ON NONECONOMIC & ECON. VALUE OF BIODIVERSITY, PERSPECTIVES ON BIODIVERSITY: VALUING ITS ROLE IN AN EVERCHANGING WORLD 43 (1999), https://www.ncbi.nlm.nih.gov/books/NBK224411/pdf/Bookshelf_NBK224411.pdf; *Ecosystem Services & Biodiversity (ESB)*, FOOD & AGRIC. ORG. OF THE U.N., <http://www.fao.org/ecosystem-services-biodiversity/en/> (last visited Dec. 30, 2018); *Biodiversity & Human Well-being*, GREENFACTS.ORG, <https://www.greenfacts.org/en/biodiversity/l-3/1-define-biodiversity.htm> (last visited Dec. 30, 2018).

⁸⁹ U.N. Conference on Environment & Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992), http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf ("Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it . . ."); see also Günther Handl, *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992*, U.N. AUDIOVISUAL LIBRARY INT'L LAW (2012), http://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf.

importance and urgency. Trophy hunting is one of those areas of law and policy where precaution is highly warranted.

To be sure, trophy hunters assert that they wish to save these magnificent animals for posterity just as wildlife protection groups do.⁹⁰ After all, if a species becomes extinct, there will be no more animals for trophy hunters to hunt and mount on their walls. Although trophy hunters may not be deliberately seeking to drive the species extinct, the arguments that their hunting activities actually benefit the animal to do not withstand scrutiny.

IV

QUESTIONABLE CONSERVATION BENEFITS

Trophy hunters assert that they contribute to conservation efforts in valuable, crucial ways.⁹¹ Trophy hunting arguably places a visual economic value on the animals and contributes to locals wanting to keep the species alive instead of converting the land on which they live to livestock or other farming purposes.⁹² In other words, trophy hunters attempt to commercialize this issue where threatened and endangered species “earn their keep” by obtaining a status comparable, if not identical, to that of farm animals, only of a different type than traditional ones.⁹³ “If it pays, it stays,” the argument goes.⁹⁴ This should be, and is, typically considered carefully in many circles. But it is a claim that, for good reason, has become controversial, with increasing doubt being cast on the actual conservation value of trophy hunting.⁹⁵

⁹⁰ See, e.g., Jason Morris & Ed Lavandera, *Texas Hunter Says He Aims to Save Black Rhinos by Killing One in Namibia*, CNN (Apr. 18, 2015), <https://www.cnn.com/2015/04/07/us/texas-namibia-black-rhino-hunt/index.html>.

⁹¹ See, e.g., Stephanie Ebbs, *Does Hunting Elephants Help Conserve the Species?*, ABC NEWS (Nov. 17, 2017), <https://abcnews.go.com/US/hunting-elephants-protect-species/story?id=51194213>; Jason Morris, *Big Game Hunters: We're the Answer to Preventing Extinction*, CNN (Jan. 12, 2018), <https://www.cnn.com/2018/01/12/us/trophy-film-big-game-hunting-convention/index.html>; Michael Paterniti, *Trophy Hunting: Should We Kill Animals to Save Them?*, NAT'L GEOGRAPHIC (Oct. 2017), <https://www.nationalgeographic.com/magazine/2017/10/trophy-hunting-killing-saving-animals/>.

⁹² Peter A. Lindsey et al., *Trophy Hunting and Conservation in Africa: Problems and One Potential Solution*, 21 CONSERVATION BIOLOGY 880, 881 (2006).

⁹³ TROPHY, *supra* note 17.

⁹⁴ See, e.g., Terry Anderson, *If It Pays, It Stays: Trophy Hunting and Rhino Conservation*, PROP. & ENV'T RESEARCH CTR. (Jan. 27, 2014), <https://www.perc.org/2014/01/27/if-it-pays-it-stays-trophy-hunting-and-rhino-conservation/>.

⁹⁵ See, e.g., Bee-Elle, *Worth More Alive: The Questionable Role of Trophy Hunting in Conservation*, HUFFINGTON POST (May 12, 2017), https://www.huffingtonpost.co.za/bee-elle/worth-more-alive-the-questionable-role-of-trophy-hunting-in-conservation_a_

For example, even though the respected International Union for Conservation of Nature (IUCN) supports trophy hunting for its purported conservation benefits, “the evidence that ‘hunting elephants saves them’ is thin.”⁹⁶ “A 2009 report from the IUCN revealed that sport hunting in West Africa does not provide significant benefits to the surrounding communities. A more recent report . . . found that trophy hunting amounts to less than two percent of tourism revenue in eight African countries that permit it.”⁹⁷ “If it is well managed, . . . there might be a case to be made for hunting as a means for [sic] conservation because it does bring in a little bit of money,” says one local wildlife expert.⁹⁸ However, for hunting to act as an “unlikely bedfellow” for conservation, good management is key, and in most cases that did not occur.⁹⁹ “[T]here are some examples [of good management], but it largely depends on the honesty of the hunting operators. By far the largest majority of people that are in the hunting profession are not doing it out of any form of conservation. They are in it for the money.”¹⁰⁰

The trophy hunting industry has indeed grown into a billion-dollar, profit-driven industry. For example, in South Africa, which has the largest trophy hunting industry in Africa, trophy hunting generates revenues of \$100 million a year.¹⁰¹ Of course, vast amounts of money also go to organizations such as Safari Club International, which in 2015 collected \$20 million in funding used to promote international trophy hunting.¹⁰² However, figures showing how much money trophy hunting allegedly contributes to conservation paints an inaccurate and

23289704/; Julian Rademeyer, *Factsheet: How Much Does Hunting Contribute to African Economies?*, AFRICA CHECK (Sept. 16, 2015, 5:15), <https://africacheck.org/factsheets/factsheet-how-much-does-hunting-contribute-to-african-economies/>.

⁹⁶ Virginia Morell, *What Trophy Hunting Does to the Elephants It Leaves Behind*, THE ATLANTIC (Nov. 18, 2017), <https://www.theatlantic.com/science/archive/2017/11/elephant-trophy-hunting-psychology-emotions/546293/>.

⁹⁷ *Id.*

⁹⁸ Karl Mathiesen, *The Idea That Hunting Saves African Wildlife Doesn't Withstand Scrutiny*, THE GUARDIAN (May 20, 2015), <https://www.theguardian.com/environment/2015/may/20/the-idea-that-hunting-saves-african-wildlife-doesnt-withstand-scrutiny>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Lindsey et al., *supra* note 92, at 880.

¹⁰² Letter from Anthony T. Eliseuson, Senior Staff Attorney, Animal Legal Defense Fund, to Joshua Winchell, U.S. Fish and Wildlife Service (Nov. 24, 2017), https://sportdocbox.com/71520702-Hunting_and_Shooting/Comments-in-response-to-notice-establishing-international-wildlife-conservation-council-82-fr-51857-docket-fws-hq-r-2017-n118.html.

overly positive picture of the situation.¹⁰³ “Economically, the actual benefits accrued by local people from the hunts have been found to be exaggerated or practically non-existent.”¹⁰⁴ According to a University of Oxford study, only about 3–5% of hunting revenues trickle down to on-the-ground projects such as school construction, education, or other community value.¹⁰⁵ Conservancies are more common where ecotourism, *not* trophy hunting, prevails.¹⁰⁶ Although some researchers have claimed that trophy hunting is a \$200 million per year enterprise in Africa, “th[is] figure is based largely on unpublished tallies by hunters’ associations.”¹⁰⁷ Recent assessments suggest that the figure is much smaller.¹⁰⁸ Further, the number of jobs generated by trophy hunting across the continent of Africa has somewhat optimistically been estimated to be approximately fifteen thousand.¹⁰⁹ Some researchers, however, point out that the actual number of jobs created by the industry is rather low considering how much land is used for the sport.¹¹⁰ Another recent analysis found that trophy hunting produces only about 20% of the jobs that the industry claims to exist.¹¹¹

“For the 11 countries where big game hunting is most widely practiced, hunting preserves take up about 15 percent of national territory, but account for less than one percent of their respective country’s GDP.”¹¹² In contrast, “the earnings from tourism overall are up to six times the amount accrued from trophy hunting.”¹¹³ Notably, a “[l]ack of scientific data on the ecological and economic impact of

¹⁰³ See Jeffrey Flocken, *Trophy Hunting: “Killing Animals to Save Them Is Not Conservation”* (Jan. 4, 2018, 8:16 AM), <https://www.cnn.com/2015/05/19/opinions/trophy-hunting-not-conservation-flocken/index.html>.

¹⁰⁴ *Id.*

¹⁰⁵ Hassanali Thomas Sachedina, *Wildlife is Our Oil: Conservation, Livelihoods and NGOs in the Tarangire Ecosystem, Tanzania* 152 (2008) (unpublished Ph.D. dissertation, School of Geography and the Environment, University of Oxford) (on file with St. Antony’s College), <http://i2.cdn.turner.com/cnn/2015/images/05/19/oxfordstudy.pdf>.

¹⁰⁶ See Lindsey et al., *supra* note 92, at 881–82.

¹⁰⁷ Beenish Ahmed, *The Economic Case Against Trophy Hunting*, THINK PROGRESS (Aug. 3, 2015, 9:08 PM), <http://thinkprogress.org/world/2015/08/03/3687425/trophy-hunting>.

¹⁰⁸ See *id.*; ECONOMISTS AT LARGE, *THE \$200 MILLION QUESTION: HOW MUCH DOES TROPHY HUNTING REALLY CONTRIBUTE TO AFRICAN COMMUNITIES?* 3 (2013).

¹⁰⁹ Ahmed, *supra* note 107.

¹¹⁰ Prashant K. Khetan, *It’s Time to Debunk Trophy Hunters’ Claims with Actual Facts*, ALTERNET (Jan. 12, 2018), <https://www.alternet.org/animal-rights/its-time-debunk-trophy-hunters-claims-actual-facts>.

¹¹¹ *Id.*

¹¹² Ahmed, *supra* note 107.

¹¹³ *Id.*

trophy hunting precludes objective assessment of its role as a conservation tool in Africa.”¹¹⁴ Thus, the evidence that trophy hunting is beneficial from even a financial point of view is *not* clear, despite what some argue.

Further, many countries in Africa allow trophy hunting with various degrees of transparency, control, and, in many cases, undisputed corruption.¹¹⁵ Some experts believe that corruption may lead to overhunting and money going into the pockets of the wrong people.¹¹⁶ Other “analysts note that corruption within governments or organizations can prevent trophy hunting revenues from funding conservation activities and can even lead to the mismanagement of hunted populations.”¹¹⁷ Another problem is the failure of governments and hunting operators to create adequate long-term benefits to local communities, which reduces incentives for rural people to actually conserve wildlife for the long run.¹¹⁸ Yet other problems include nonindependent analyses, weak governance, a lack of transparency, excessive hunting quotas, poor monitoring, and illegal hunting.¹¹⁹ Trophy hunting clearly requires urgent action and reform. A report by the Democratic Staff of the House Committee on Natural Resources states that “the trophy hunting industry needs to be regulated and held accountable for there to be any hope of a consistent conservation benefit.”¹²⁰

In fact, if nations want to make money off the species (and they do), ecotourism is a much more sustainable and, to most people, acceptable source of income. For example, in 2013, the total of international tourism receipts for Africa was \$34.2 billion, the majority of which

¹¹⁴ Lindsey et al., *supra* note 92, at 880.

¹¹⁵ Vanda Felbab-Brown, *On the Vices and Virtues of Trophy Hunting*, BROOKINGS (Nov. 27, 2017), <https://www.brookings.edu/blog/order-from-chaos/2017/11/27/on-the-vices-and-virtues-of-trophy-hunting/>.

¹¹⁶ Lindsey et al., *supra* note 92, at 881.

¹¹⁷ DEMOCRATIC STAFF OF THE H. COMM. ON NAT. RES., MISSING THE MARK: AFRICAN TROPHY HUNTING FAILS TO SHOW CONSISTENT CONSERVATION BENEFITS 1, 13 (2016), <https://naturalresources.house.gov/imo/media/doc/Missing%20the%20Mark%20Final.pdf>.

¹¹⁸ Lindsey et al., *supra* note 92, at 881.

¹¹⁹ Cruise, *supra* note 5.

¹²⁰ DEMOCRATIC STAFF OF THE H. COMM. ON NAT. RES., *supra* note 117, at 11.

came from wildlife watching.¹²¹ Only 1.8% of tourism revenue was generated from trophy hunting.¹²²

Some nations are taking active steps against sport hunting in order to protect wild animals. For example, Kenya banned trophy hunting in 1977.¹²³ Botswana and other countries have implemented countrywide bans on certain or all big game hunting, noting the extreme species decline.¹²⁴ Botswana now has more elephants than any other nation,¹²⁵ with almost 40% of the total African population. This demonstrates that trophy hunting is far from vital to or even necessary for species conservation.

Hunters argue that the number of wild and rare animals are declining rapidly in some countries because they do *not* allow trophy hunting.¹²⁶ The reasons for species loss are, of course, complex.

[A]ccording to scientists [reasons for species decline include] habitat loss due to expanding agriculture and poaching for bushmeat or to feed[ing] the illegal wildlife trade, but underlying all this: explosive human population growth. Kenya, like most African countries, has seen human population rise at a shocking rate in the past 40 years. In 1977, Kenya had 14.5 million people; today it has more than 48 million people.

This trend is similar across Sub-Saharan Africa, [where the] population has [nearly] tripled since 1977 [and reached] a billion people in 2015.¹²⁷

This rise in human population has placed a crushing pressure on the continent's wildlife.¹²⁸ However, attempts to promote trophy hunting

¹²¹ Marion Whitehead, *How Poachers Kill Jobs*, CONSERVATION ACTION TRUST (June 24, 2015), <https://conservationaction.co.za/media-articles/how-poachers-kill-jobs/>.

¹²² Khetan, *supra* note 110.

¹²³ Jeremy Hance, *Mozambique: 6,000 Animals to Rewild Park is Part-Funded by Trophy Hunting*, THE GUARDIAN (Jun. 19, 2017, 10:17), <https://www.theguardian.com/environment/radical-conservation/2017/jun/19/rewilding-mozambique-trophy-hunting-elephants-giraffe-poaching-zimbabwe-sango-save-zinave>.

¹²⁴ AFRICA GEOGRAPHIC, *Botswana Hunting Ban Takes Effect* (Jan. 27, 2014), <https://africageographic.com/blog/botswana-hunting-ban-takes-effect/>.

¹²⁵ Alastair Leithead, *Why Elephants are Seeking Refuge in Botswana*, BBC NEWS (Aug. 31, 2016), <https://www.bbc.com/news/world-africa-37230700>.

¹²⁶ See, e.g., Peter A. Lindsey et al., *The Trophy Hunting of African Lions: Scale, Current Management Practices and Factors Undermining Sustainability*, PLOS ONE, Sept. 2013, at 3; see also Charlotte Allen, *Why Allowing Trophy Hunting Is Good for Endangered Species*, L.A. TIMES (Aug. 8, 2015, 6:00 AM), <https://www.latimes.com/opinion/opinion-la/la-oe-allen-trophy-hunting-endangered-species-20150808-story.html>; Dickman, *supra* note 4.

¹²⁷ Cruise, *supra* note 68.

¹²⁸ Hance, *supra* note 123.

as a solution to this vexing problem not only fly in the face of logic but are also of dubious legality, especially given the precautionary principle of law. It is also important to note that population growth and species conservation can go hand in hand, as witnessed precisely by the Kenyan example: despite huge population growth, the country has a relatively stable elephant population.¹²⁹ Some estimates even show that the population has been increasing moderately over the past few years.¹³⁰

In weighing the arguments for and against trophy hunting, it is important to consider the credibility of the source. Do we trust the arguments of self-interested trophy hunters and their organizations? Should we trust the statements of government officials in nations which are known to struggle with corruption? Or rather, should we trust experts from reputable conservation groups around the world and research scientists pointing out a real danger to species and ecosystems? The answer is, and must be, the latter. As is evident from the sound debates surrounding the sustainability of trophy hunting, it is simply far from certain that the positive effects of trophy hunting frequently extolled by supporters exist. Indeed, trophy hunting may well be counterproductive for species protection. At best, the evidence of the benefits of trophy hunting is mixed. Given the undeniably plummeting number of rare animals still alive, it is simply too risky to allow this dangerous practice to continue. The time has come to act conservatively in the true sense of the word and to do all we can to protect every single one of the last remaining few of these magnificent, ancient species before it is too late. Dan Ashe, former director of the Fish and Wildlife Service, says that “[t]he argument that we need to hunt endangered animals . . . to conserve them, is old and tired.”¹³¹ “We can conserve elephants without hunting them.”¹³² Under the internationally recognized precautionary principle of law, we must stop killing rare animals in the name of conservation.

¹²⁹ See Paul Steyn, *African Elephant Numbers Plummet 30 Percent, Landmark Survey Finds*, NAT’L GEOGRAPHIC (Aug. 31, 2016), <https://news.nationalgeographic.com/2016/08/wildlife-african-elephants-population-decrease-great-elephant-census/>.

¹³⁰ James Isiche, *Tsavo Elephant Census Reveals Population Back Above 12,000*, INT’L FUND FOR ANIMAL WELFARE (Jun. 22, 2017), <https://www.ifaw.org/international/news/tsavo-elephant-census-reveals-population-back-above>.

¹³¹ Ashe, *supra* note 74 (alteration in original).

¹³² *Id.*

Some argue that Westerners trying to protect animals in Africa by not allowing locals to manage their own wildlife is neocolonialism.¹³³ The converse of this argument must prevail. A major reason for allowing trophy hunting at all is to satisfy the desires of hunters from, typically, the Global North, especially the United States.¹³⁴ Rich individuals from the Global North should not be allowed to exploit the dire economic situation in the Global South by depleting the resources in those nations in this current unsustainable manner. It is a mischaracterization to argue that trying to save individual animals misses the point of saving the entire species. At this time, trying to save the species requires looking at each individual animal as needing protection. Furthermore, there can be no doubt that rare animals form part of an important worldwide heritage. They are not merely a local “resource” to be “managed” when that, in effect, means allowing the resource to be depleted.

As always, correct information and education is key. History shows the dangers of excessive animal destruction. Helping people in countries other than one’s own understand and avoid disastrous consequences is not neocolonialism; it is education and assistance, taking the uniqueness of the nations into account and trying to preserve this uniqueness.

V

VALUES OF TROPHY-HUNTED ANIMALS DEAD OR ALIVE

Trophy hunters will pay assistants and landowners anywhere from \$50,000 for the chance to kill a lion¹³⁵ to \$350,000 for a rhino.¹³⁶ The going rate for an elephant is about \$80,000.¹³⁷ Although placing a commercial value on a rare, imperiled animal may be inherently offensive to some, a more effective and less judgmental response

¹³³ See United Hunters Fund of Can., *Neo-Colonialism Has No Place in African Trophy Hunting*, <http://unitedhuntersfund.com/node/66> (last visited Feb. 23, 2019); Elizabeth Garland, *The Elephant in the Room: Confronting the Colonial Character of Wildlife Conservation in Africa*, 51 AFR. STUD. REV. 51 (2008); Kit Ramgopal & Matt Cooke, *Xanda the Lion is Dead, but Trophy Hunting Helps His Kin*, WSJ (Aug. 30, 2017, 6:41 PM), <https://www.wsj.com/articles/xanda-the-lion-is-dead-but-trophy-hunting-helps-his-kin-1504132892>.

¹³⁴ Flocken, *supra* note 103.

¹³⁵ Allen, *supra* note 126.

¹³⁶ Herskovitz, *supra* note 69.

¹³⁷ Michael Paterniti, *Trophy Hunting: Should We Kill Animals to Save Them?*, NAT’L GEOGRAPHIC (Oct. 2017), <https://www.nationalgeographic.com/magazine/2017/10/trophy-hunting-killing-saving-animals/>.

against trophy hunting might well be that the animals are actually worth more alive than dead. But how do we value *not* killing an animal?

In some cases, there have been studies that have determined that protecting a hunted species has clear economic advantages over allowing members of the species to be killed. For example, while ivory from a poached elephant can fetch \$21,000 on the black market—a substantial onetime windfall for the poachers—a living elephant is worth more than \$1.6 million in ecotourism opportunities, providing long-term economic benefits to the entire community.¹³⁸ Other species, such as sharks and manta rays, which have significant value to those who catch and sell them, can also bring in much more revenue from properly managed tourism than from illegal trade and poaching.¹³⁹

Attempts to measure the value of rare species of animals in the wild miss an important point—namely, that it might not even be possible or appropriate to place a “value” on rare wildlife. In addition to there being a mere price for a kill, wild animals have both “existence” and “intrinsic” values¹⁴⁰ that are, or should be, considered in this discourse to a much larger extent than ever before, especially as the animals become more and more rare. Thus, while a trophy hunter may be willing to spend a large sum of money for the chance to kill an animal, its death will deprive others of the opportunity to observe that animal in the wild for the remainder of its natural life. The animal’s death will deprive people of the satisfaction of knowing that the animal exists even if they do not have the opportunity to see the animal in person. These intangible benefits are known as the “existence value” of an animal.¹⁴¹ Such valuation recognizes the fact that many people would not value actually “using” (killing) the wildlife, but would instead value the possibility of a future enjoyment of the animal alive.¹⁴² People often highly value natural resources that they have no desire to personally use.¹⁴³ People value the preservation of natural resources as an

¹³⁸ Platt, *supra* note 6.

¹³⁹ See G.M.S. Vianna et al., *Socio-Economic Value and Community Benefits from Shark-Diving Tourism in Palau: A Sustainable Use of Reef Shark Populations*, 145 BIOLOGICAL CONSERVATION 267 (2012); Mary P. O’Malley et al., *The Global Economic Impact of Manta Ray Watching Tourism*, 8 PLOS ONE, May 31, 2013, at 1; Sarah Lewis, *Manta*, CONSERVATION INT’L., https://www.conservation.org/publications/Documents/CI_manta-factsheet.pdf (last visited Feb. 23, 2019).

¹⁴⁰ Thomas H. Stevens et al., *Measuring the Existence Value of Wildlife: What Do CVM Estimates Really Show?*, 67 LAND ECON. 390, 399 (1991).

¹⁴¹ *Id.* at 390.

¹⁴² *Id.*

¹⁴³ See *id.*

endowment or bequest to future generations. People also value the knowledge that a resource is available for the enjoyment of many, not just a few, such as hunters, and they value the belief that natural resources, such as rare animals, also have an intrinsic value *independent* of any direct benefit to humans.¹⁴⁴ In fact, the existence value of wildlife may be quite large relative to traditional use values. When asked to divide a research study payment into either “use” or “existence” value categories, respondents assigned only 7% to the “use” category.¹⁴⁵ Thirty-four percent of the money was allocated to the “bequest” value, and the “intrinsic” value category (the existence value) received no less than 48% of the virtual funds “because animals have a right to exist independent of any benefit or harm to people.”¹⁴⁶ In fact, the majority of Americans prefer nonlethal enjoyment and values of wild animals.¹⁴⁷ For example, a 2011 poll found that 70.4% of American respondents would pay to view lions on an African safari but only 6.6% would pay to hunt them.¹⁴⁸

The existence and intrinsic values tend to get ignored or treated with skepticism, as if conventional monetary calculus is inherently better than other valuation methods. This is simply not the case. Since at least Plato, we have known aesthetics, values, ethics, and morals to be of significance to mankind in a host of contexts.¹⁴⁹ This is arguably the case in socio-legal developments as well. Non-Western traditions, such as Buddhism, similarly recognize the theory that “the oneness of life and its environment transcends the [controversial and anthropocentric] man–nature dualism.”¹⁵⁰ Attempts to downplay or quash the importance of deeper human preferences serve no valuable function in today’s legal philosophy where moral and ethical components are in

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 399.

¹⁴⁶ *Id.*

¹⁴⁷ Flocken, *supra* note 103; Camille H. Fox & Marc Bekoff, *Integrating Values and Ethics into Wildlife Policy and Management—Lessons from North America*, 1 ANIMALS 126, 135 (2011).

¹⁴⁸ Flocken, *supra* note 103.

¹⁴⁹ See, e.g., Mary Margaret Mackenzie, *Plato’s Moral Theory*, 11 J. MED. ETHICS 88 (1985); Col Gurnam Singh, *Importance of Moral & Ethics Values Speech in Our Lives*, SPEAKING TREE (Sep. 30, 2015, 12:48 PM), <https://www.speakingtree.in/blog/importance-of-moral-ethics-values-in-our-lives>; Yuriko Saito, *Aesthetics of Everyday*, in STANFORD ENCYCLOPEDIA PHILOSOPHY 1 (Edward N. Zalta ed. 2015), <https://plato.stanford.edu/entries/aesthetics-of-everyday/>.

¹⁵⁰ Barbara Paterson, *Ethics for Wildlife Conservation: Overcoming the Human-Nature Dualism*, 56 BIOSCIENCE 144, 149 (2006) (alteration in original).

play, as they are here. At bottom, the “theoretical debate on whether nonhumans have value independent of humans is criticized by environmental pragmatists, who claim that while philosophers argue, the environment burns.”¹⁵¹

In short, while an animal is evidently worth more dead than alive to the person who plans to mount it on his or her wall, it is worth more alive to just about everybody else. A small minority is typically not granted the power to make decisions contrary to the will of the majority of members of society. Whereas a “tyranny of the majority” situation can occasionally be cause for concern and further deliberation, this is not the case with something as irreversible and time sensitive as species extinction. In this context, the powerful and loud few voices should not be allowed to drown out the majority’s interest in conservation. This is not a situation where protecting vital interests of the few warrant setting aside the interests of the many. Trophy hunters may have a personal interest in continuing their practice, but this is simply not of vital importance to society at large. Too much is at stake. This is especially so given established precautionary principles of law and democratically decided rules of law.

VI

NEGATIVE EFFECTS ON THE ANIMAL GENE POOL

Some advocates of trophy hunting will argue that trophy hunters mostly, or only, kill nonbreeding animals (large males) and thus their actions will not harm the species as a whole.¹⁵² In fact, they argue it may even help the species.¹⁵³ The argument that only nonbreeding animals are trophy hunted is not factually correct. Consider the example of Cecil the Lion: when he was killed, he was a fully fertile alpha male with at least one dozen cubs.¹⁵⁴ Research shows that when a male lion in a pride is killed, especially a high-ranking one, the social

¹⁵¹ *Id.* at 144.

¹⁵² David Usborne, *Big-Game Hunters in Texas Bid for Licence to Kill One of Africa’s Rare Black Rhinos*, INDEPENDENT (Jan. 12, 2014, 12:46 PM), <https://www.independent.co.uk/news/world/americas/big-game-hunters-in-texas-bid-for-licence-to-kill-one-of-africa-s-rare-black-rhinos-9054250.html>.

¹⁵³ *Wildlife Conservation*, BIG GAME HUNTING ADVENTURES, <https://biggamehuntingadventures.com/heres-how-hunting-promotes-wildlife-conservation/> (last visited Nov. 23, 2018).

¹⁵⁴ Matthew Weaver, *Cecil the Lion’s Cubs Most Likely Killed by Rival Lion, Say Conservationists*, THE GUARDIAN (July 29, 2015), <https://www.theguardian.com/environment/2015/jul/29/cecil-the-lions-cubs-likely-most-killed-by-rival-lion-say-conservationists>.

group is disrupted and a cascade of deaths can result.¹⁵⁵ In such situations, other males may be killed by trying to advance their positions in the hierarchy, lion cubs are often “killed when a new dominant male takes over,” and lionesses may be killed trying to protect their cubs.¹⁵⁶

Specialists recognize that the selective killing of the larger, most prominent members of the species, such as alpha males, creates a gender imbalance that reduces reproduction in the remaining population.¹⁵⁷ This human interference creates an unnatural selection as it alters the population’s natural genetic structure and survival traits.¹⁵⁸ The decline of the number of alpha males disrupts the overall population density and has an effect on the genetic and phenotypic traits of the species, which in turn creates adverse consequences for male breeding success.¹⁵⁹ Mounting evidence suggests that activities such as trophy hunting and even commercial fishing are leading to drastic evolutionary changes by causing “unnatural” or “artificial” selection processes as the “inevitable logic of Darwinian selection kicks in.”¹⁶⁰ For example, Atlantic codfish used to be several meters long.¹⁶¹ Because of intense commercial fishing, such fish now often measure only around one meter.¹⁶² This is because commercial fishing practices remove the bigger fish and their gene pool, allowing the gene for “smallness” to prosper.¹⁶³

“Our relentless pursuit of the biggest individuals is [also] causing evolutionary change in,” for example, bighorn sheep in North America.¹⁶⁴ “Trophy hunters [often] pay large sums of money to hunt

¹⁵⁵ See, e.g., A. J. Loveridge et al., *The Impact of Sport-Hunting on the Population Dynamics of an African Lion Population in a Protected Area*, 134 BIOLOGICAL CONSERVATION 548, 549 (2007); Hannah Parry, *One of Cecil’s Cubs is Killed by Rival Male*, DAILY MAIL ONLINE (Aug. 8, 2015, 7:17 PM), <https://lovewildafrika.com/wp-content/uploads/2015/10/Loveridge-et-al-2007-impact-of-trophy-hunting-on-lion-population-dynamics-in-Hwange.pdf>.

¹⁵⁶ Flocken, *supra* note 103.

¹⁵⁷ See Fred W. Allendorf & Jeffrey J. Hard, *Human-Induced Evolution Caused by Unnatural Selection Through Harvest of Wild Animals*, 106 PROC. NAT’L ACAD. SCI. 9987, 9990 (2009).

¹⁵⁸ *Id.* at 9987.

¹⁵⁹ *Id.* at 9990–92.

¹⁶⁰ Adam Hart, *Are Humans Driving Evolution in Animals?*, BBC (Feb. 2, 2016), <http://www.bbc.com/news/science-environment-35462335>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* (alteration in original).

... the biggest and most impressive males.”¹⁶⁵ In the wild, “big males with big horns can fight successfully against other males and . . . mate with far more females than smaller males with less impressive horns.”¹⁶⁶ However, trophy “hunters [create] a strong selection pressure on these big males.”¹⁶⁷ “Suddenly[,] the advantages of being big (more mates [and] more offspring) are countered by a rather big disadvantage[—]being shot and mounted on a wall.”¹⁶⁸ In short, “hunting is causing [undeniable] evolutionary changes in the genetic make-up of the population” of trophy-hunted species.¹⁶⁹ This negative trend has become known as “evolution in reverse” or “survival of the weakest.”¹⁷⁰

Furthermore, many trophy-hunted animals serve as “keystone species.”¹⁷¹ Keystone species are species such as elephants upon which many other species depend for survival.¹⁷² For example, elephants break down old decaying trees and branches to help nutrients be reabsorbed by the earth.¹⁷³ They spread the seeds of various plants and trees through their dung throughout the ecosystem to continue to help food grow for other animals.¹⁷⁴ Elephants also dig for water and create waterholes for other animals to use, and they create pathways through dense bush for other animals.¹⁷⁵

Science also clearly shows that the disappearance of a species or even a large number of animals of some species can have a negative effect on the ecosystem in general.¹⁷⁶ Nature is a highly complex,

¹⁶⁵ *Id.* (alteration in original).

¹⁶⁶ *Id.* (alteration in original).

¹⁶⁷ *Id.* (alteration in original).

¹⁶⁸ *Id.* (alteration in original).

¹⁶⁹ *Id.* (alteration in original).

¹⁷⁰ Flocken, *supra* note 103.

¹⁷¹ See *Keystone Species*, NAT’L GEOGRAPHIC SOC’Y, <https://www.nationalgeographic.org/encyclopedia/keystone-species/> (last visited Nov. 23, 2018); see also Rachel Nuwer, *Here’s What Might Happen to Local Ecosystems if All the Rhinos Disappear*, SMITHSONIAN.COM (Feb. 27, 2014), <https://www.smithsonianmag.com/articles/heres-what-might-happen-local-ecosystems-if-all-rhinos-disappear-180949896/>.

¹⁷² Nuwer, *supra* note 173; see also *Keystone Species*, *supra* note 173.

¹⁷³ Debbie Ethell, *African Elephants Are a Keystone Species—What Does That Mean?*, KOTA FOUND. FOR ELEPHANTS (Nov. 2, 2015), <https://www.kotafoundation.org/elephants-are-a-keystone-species-what-does-that-mean/>.

¹⁷⁴ *Id.*

¹⁷⁵ *Why Elephants Matter*, SAVE THE ELEPHANTS, <http://www.savetheelephants.org/about-elephants-2-3-2/importance-of-elephants/> (last visited Nov. 23, 2018).

¹⁷⁶ See, e.g., Jennifer Bove, *Why It Matters When Species Go Extinct*, THOUGHTCO.COM (Mar. 25, 2018), <https://www.thoughtco.com/why-it-matters-when-species-go-extinct->

interwoven web of many types of living beings that all serve a role in the overall system.¹⁷⁷ The overall ecosystem provides many of the values that people enjoy and seek out such as recreation, aesthetic, commercial, and scientific values.¹⁷⁸ Human tinkering with nature has never been a good idea: think releasing mongooses in the tropics or other warm locales to kill rats¹⁷⁹ or rabbits in Australia for hunters to kill and as an extra source of protein.¹⁸⁰ These and other initially appealing ideas went famously wrong.¹⁸¹ Killing threatened or endangered species of animals in an alleged attempt to save them is simply too risky given the unsuccessful human history of interfering with ecosystems around the world.¹⁸² Some failed human/nature experiments can still be reversed. This is not the case with endangered species; once they are gone, they are gone.

Some trophy animals are hunted in the wild, whereas others are bred, kept, and hunted in captivity (“canned hunting”).¹⁸³ Some argue that when the trophy animals are bred and killed on farms, the wild

1182006; Mary Dowd, *What Happens When Something in a Food Chain Goes Extinct?*, SCIENCING.COM (Mar. 10, 2018), <https://sciencing.com/happens-something-food-chain-goes-extinct-18214.html>; Ashley Williams, *How Would a Species' Extinction Impact the Food Web, Our Ecosystems?*, ACCUWEATHER, <https://www.accuweather.com/en/weather-news/how-would-a-species-extinction-impact-the-food-web-our-ecosystems/70004743> (last visited Nov. 23, 2018).

¹⁷⁷ NATURE & SCIENCE, <https://www.fs.usda.gov/main/mendocino/learning/nature-science> (last visited Nov. 21, 2018).

¹⁷⁸ *Id.*

¹⁷⁹ David Peacock, *The Mongoose in Australia: Failed Introduction of a Biological Control Agent*, 58 AUSTL. J. ZOOLOGY 205 (2010); Darde Gamayo, *Mongoose! The Epic Fail!*, BIG ISLAND NOW (Apr. 15, 2016, 2:00 PM), <http://bigislandnow.com/2016/04/15/mongoose-the-epic-fail>.

¹⁸⁰ David Peacock, *How Australia Controls Its Wild Rabbits – From the Wildlife Professional Magazine*, THE WILDLIFE SOC'Y (May 5, 2015), <http://wildlife.org/how-australia-controls-its-wild-rabbits>.

¹⁸¹ *Id.*; Wendy Zukerman, *Australia's Battle with the Bunny*, ABC SCIENCE (Apr. 8, 2009), <http://www.abc.net.au/science/articles/2009/04/08/2538860.htm>.

¹⁸² See generally David Western, *Human-modified Ecosystems and Future Evolution*, 98 PROC. NAT'L ACAD. SCI. 5458 (2001); Kanya D'Almeida, *Humanity Failing the Earth's Ecosystems*, INTER PRESS SERV. (Oct. 6, 2014), <http://www.ipsnews.net/2014/10/humanity-failing-the-earths-ecosystems>.

¹⁸³ Patrick Barkham, *“Canned Hunting”: The Lions Bred for Slaughter*, THE GUARDIAN (Jun. 3, 2013, 2:00 PM), <https://www.theguardian.com/environment/2013/jun/03/canned-hunting-lions-bred-slaughter>; Katarzyna Nowak, *The End of “Canned” Lion Hunting May Be in Sight*, NAT'L GEOGRAPHIC (Mar. 11, 2016), <https://news.nationalgeographic.com/2016/03/140311-trophy-hunting-blood-lions-south-africa-conservation-captive-breeding>.

members of their species will not be affected.¹⁸⁴ The problem with this argument is that to consider threatened and endangered species as having value only as a dead “trophy” fails to recognize what these animals are and ought to remain: wild animals that serve a valuable and key part of the ecosystem. Even the supply of farmed trophy animals may well stimulate the demand for both trophies and other products from rare species when seen to be mere farm products.¹⁸⁵

Rare species are *not* farm animals merely to be “harvested” for fun or for their “products.” Whether raising certain animals for trophy hunting purposes in enclosed farms may satisfy the global demand for trophies, such as the rhino horn, is a separate complex issue. However, the demand for such products is greater than ever.¹⁸⁶ Raising animals on farms for this purpose may hurt the species in the wild by normalizing the killing of certain animals for their products, thus causing the demand for such animal products to increase.

VII

MOST AMERICANS OPPOSE TROPHY HUNTING FOR “SPORT”

Previously, hunters would track big African game for weeks in order to kill the targeted animal.¹⁸⁷ Nowadays, however, trophy hunters arrive with money in their pockets, hire local guides with off-road vehicles and other modern equipment, and set about killing the targeted animals in days, if not mere hours, so they can return home with trophy or “kill shot” in hand.¹⁸⁸ In “canned hunts,” the situation is even worse: the targeted animals are enclosed, awaiting their fate.¹⁸⁹ In some of those “hunts,” animals have first been used in commercialized lion cub

¹⁸⁴ Michael Paterniti, *Trophy Hunting: Should We Kill Animals to Save Them?*, NAT’L GEOGRAPHIC (Oct. 2017), <https://www.nationalgeographic.com/magazine/2017/10/trophy-hunting-killing-saving-animals>.

¹⁸⁵ Mary Rice, *The Case Against a Legal Ivory Trade: It Will Lead to More Killing of Elephants*, YALE ENV’T 360 (Oct. 13, 2014), https://e360.yale.edu/features/counterpoint_the_case_against_a_legal_ivory_trade_it_will_lead_to_more_killing_of_elephants.

¹⁸⁶ See, e.g., Nicky Reeves, *What Drives the Demand for Rhino Horns?*, THE GUARDIAN (Mar. 3, 2017, 7:34 PM), <https://www.theguardian.com/science/the-h-word/2017/mar/03/what-drives-the-demand-for-rhino-horns>; Katherine Ellis, *Tackling the Demand for Rhino Horn*, SAVE THE RHINO (Apr. 29, 2013), <https://www.savetherhino.org/thorny-issues/tackling-the-demand-for-rhino-horn/>; Jacques Rigoulet, *Why Is the Illicit Rhino Horn Trade Escalating?*, THE CONVERSATION (Apr. 21, 2017), <https://www.theguardian.com/science/the-h-word/2017/mar/03/what-drives-the-demand-for-rhino-horns>.

¹⁸⁷ TROPHY, *supra* note 17.

¹⁸⁸ TROPHY, *supra* note 17.

¹⁸⁹ Nowak, *supra* note 183.

petting or “walking with the lions” experiences before being killed. This is clearly an ethical violation in any normal sense of the word “hunt” and even violates many hunters’ own fundamental notions of what constitutes a “fair chase.”¹⁹⁰ In fact, the Dallas Safari Club, one of the largest trophy hunting organizations in the United States, concluded that canned hunting is unethical and does not contribute to the conservation of wild lions.¹⁹¹ The Club noted that “to date, there is no evidence or scientific research to suggest that captive bred lion hunting contributes to the conservation of the wild lion.”¹⁹²

Calling trophy hunting a “sport”—even where truly conducted in the wild—is one of the many euphemisms used by trophy hunters to make their practice sound more acceptable.¹⁹³ “Harvest” is another.¹⁹⁴ “Take” is a third.¹⁹⁵ These euphemisms help to shape (or perhaps skew) public opinion and are a known mode of moral disengagement.¹⁹⁶ Let’s face it: trophy hunting is about killing rare animals for personal enjoyment; in other words, for fun. Is that acceptable to most people, though? In theory, the view of the majority would matter to the development of law and policy in a democratic nation.

As mentioned above, most Americans disapprove of the practice of trophy hunting. Popular views on big game hunting and even hunting in general have evolved much just in recent years¹⁹⁷ and are likely to continue to trend against the practice. A popular global backlash against big game trophy hunting in Africa following the killing of “Cecil the Lion” may lead conservation organizations to more openly

¹⁹⁰ Cruise, *supra* note 68.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See, e.g., *The “Sport” of Hunting, Why I Don’t Call It That*, TOVAR CERULLI (2011), <https://tovarcerulli.com/the-sport-of-hunting-why-i-dont-call-it-that/>; Oliver Milman, “There’s No Sport in That”: Trophy Hunters and the Masters of the Universe, THE GUARDIAN (Jul. 27, 2017, 11:00 AM), <https://www.theguardian.com/environment/2017/jul/27/theres-no-sport-in-that-trophy-hunters-and-the-masters-of-the-universe>.

¹⁹⁴ Cruise, *supra* note 68.

¹⁹⁵ Stephen Leahy, *Trophy Hunting May Drive Extinctions, Due to Climate Change*, NAT’L GEOGRAPHIC (Sept. 17, 2017), <https://news.nationalgeographic.com/2017/11/wildlife-watch-trophy-hunting-extinctions-evolution/>.

¹⁹⁶ Chelsea Batavia et al., *The Elephant (Head) in the Room: A Critical Look at Trophy Hunting*, CONSERVATION LETTERS 5 (Apr. 2018), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/conl.12565>.

¹⁹⁷ Christopher Ingraham, *Why Americans – Including Hunters – Are Souring on Big-Game Hunting*, WASH. POST: WONKBLOG (Nov. 20, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/11/20/why-americans-including-hunters-are-souring-on-big-game-hunting/?utm_term=.2cd0a1e0051f.

oppose the practice as well.¹⁹⁸ Large companies, concerned about their public image, have also begun distancing themselves from trophy hunting operations, as was seen when large commercial airlines banned travelers from using their flights to bring home trophies from lions, rhinoceroses, and other big game after the gruesome killing of Cecil.¹⁹⁹

Nonetheless, many trophy hunters continue to strive to obtain the status in their circles of killing one or even all the “Big 5”: buffalo, elephant, leopard, lion, and rhinos (both black and white).²⁰⁰ As stated recently by one trophy hunter, “We all want just *one* such animal – we want that experience one time.”²⁰¹ The problem with this—apart from it being an incredibly egotistical and anthropocentric statement—is that there are just not enough numbers of the species to support every hunter who may have a “kill list” that he or she would like to check off. Perversely, the rarer the animal, the greater the prestige among hunting enthusiasts in hunting it.²⁰² Organizations such as Safari Club International even give “World Hunting Awards” to hunters who can literally check off a list of animals they have killed; they grouped into, for example, the “African Big Five” or “Dangerous Game of Africa.”²⁰³ Not unlike a mere airline frequent flyer program, Safari Club International promises various types of “achievements” for hunters,

¹⁹⁸ Christie Taylor, *Public Opinion Turning Against Trophy Hunting?*, WIS. PUB. RADIO: JOY CARDIN SHOW (Aug. 4, 2015, 1:15 PM), <https://www.wpr.org/public-opinion-turning-against-trophy-hunting>.

¹⁹⁹ Meghan Keneally, *Top US Air Carriers Ban Hunting “Trophies” from Planes*, ABC NEWS (Aug. 4, 2015, 12:19 PM), <https://abcnews.go.com/US/top-us-air-carriers-ban-hunting-trophies-planes/story?id=32875093>; Sarah Larimer, *While Airlines Ban Hunting Trophy Shipments, UPS Says It Won’t Bow to Controversy*, WASH. POST: MORNING MIX (Aug. 4, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/08/03/delta-air-lines-bans-freight-shipments-of-lion-hunting-trophies/?utm_term=.2b415085b8a3; Daniel Goldstein, *Major U.S. Airlines Halt Carrying African Hunting Trophies After Cecil the Lion Killing*, MARKETWATCH (Aug. 4, 2015, 6:08 PM), <http://www.marketwatch.com/story/delta-air-lines-bans-animal-hunting-trophies-after-cecil-the-lion-shooting-2015-08-03>.

²⁰⁰ See, e.g., *The Big Five: Africa’s Most Sought-After Trophy Animals*, N.Y. TIMES (Aug. 10, 2015), <https://www.nytimes.com/interactive/2015/08/10/world/africa/africa-big-game-hunting.html>; Rachael Bale, *Exclusive: Hard Numbers Reveal Scale of America’s Trophy-Hunting Habit*, NAT’L GEOGRAPHIC (Feb. 6, 2016), <https://news.nationalgeographic.com/2016/02/160206-American-trophy-hunting-wildlife-conservation/>; *Big Five Hunting*, TROPHY TRACKERS AFRICA!, http://www.trophytrackersafrica.com/big_game_hunting.html (last updated Mar. 24, 2017).

²⁰¹ TROPHY, *supra* note 17.

²⁰² Bale, *supra* note 200.

²⁰³ SAFARI CLUB INTERNATIONAL, RECORD BOOK: WORLD HUNTING AWARD FIELD JOURNAL 2 (2018).

such as membership in “the SCI Inner Circles.”²⁰⁴ “This award program offers a variety of leveled awards for any type of big game hunter. Inner Circle awards contain five different levels per award: Copper, Bronze, Silver, Gold, and Diamond levels.”²⁰⁵ Other membership benefits of killing various rare species are as follows: “If a member reaches the World Hunting Award ring they are presented a complimentary custom-crafted ring made of 14-karat white or yellow gold, onyx and 21 point diamonds with six stones.”²⁰⁶ It stands to reason that the professed desire of trophy hunters to conserve endangered species must be taken with a large grain of salt. At a minimum, the personal desires of trophy hunters should not be allowed to drive public policy in this area. Personal wants and needs for prestige are, and must remain, irrelevant to the overall problem of species extinction.

The hunting of all types of animals is not necessarily wrong from an ecosystemic point of view. Whether or not we personally like hunting or think it is a sport, reasonable arguments can be made that hunting non-threatened animals has become necessary from a management point of view and that wild animals consumed for their meat have had a better life in the wild than many farm animals. But allowing wealthy individuals to check off their bucket lists by killing some of the last few surviving rare animals makes no sense; it is unethical and plain wrong. Just as there are many other legal limits to what we may do for “fun” as individuals in an increasingly global and interconnected society, so too we cannot continue to allow a select few individuals to contribute to the rapid extermination of species that we *all* have a right to enjoy *alive*. Whether or not trophy hunting truly is a sport or an example of glorified killing as others would call it, the practice has become unacceptable to most people. In fact, a 2015 poll showed that 64% of Americans support placing bans on trophy hunting, with 74% of Americans opposing canned hunts.²⁰⁷ Even 34% of hunters oppose big game hunting.²⁰⁸ A 2014 poll similarly “found that 82% of Americans

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Most U.S. Adults Oppose Trophy Hunting*, POLL-VAULTER: OPINIONS AND TRENDS NATIONWIDE (Nov. 21, 2017), <https://www.poll-vaulter.com/most-u-s-adults-oppose-trophy-hunting/>.

²⁰⁸ *Americans Oppose Big Game Hunting . . . More Than Six in Ten Favor Legal Ban*, MARIST POLL (Nov. 24, 2015), <http://maristpoll.marist.edu/1124-americans-oppose-big-game-hunting-more-than-six-in-ten-favor-legal-ban/#sthash.YKmqvDYG.dpbs> [hereinafter MARIST POLL].

surveyed support banning lion trophies, and 83% support banning elephant trophies.”²⁰⁹ In fact, 56% of Americans oppose hunting animals for sport in general.²¹⁰ “[M]ost Americans, 86%, consider big game hunting to be especially distasteful.”²¹¹

Other types of outdoor sports are available for people to enjoy in a sustainable manner; trophy hunting should not continue to be one of them. Just as muskox were once hunted to near-extinction for their hides, food, and trophies²¹² and wolves to protect farm animals (and for fun), but saved in the eleventh hour, so too should trophy hunting of threatened species be stopped before it is too late. The voices of all these people should not be drowned out by the powerful few who continue to consider trophy hunting an enjoyable leisure activity. Not so long ago, many, perhaps most, Americans also considered it enjoyable to watch elephants perform in circuses²¹³ or orcas perform at SeaWorld.²¹⁴ The sentiment shifted against these practices as objections to exploiting these majestic animals for their mere entertainment value became widespread.²¹⁵ Trophy hunting is becoming passé as well. The time to stop it has come. Hunters who enjoy the thrill of a chase of big game can, in some nations such as South Africa, assist veterinarians sedating animals with tranquilizer darts, thus offering the “thrill without the kill.”²¹⁶ This and other sustainable wildlife enjoyment methods are acceptable. Trophy hunting is not.

²⁰⁹ Flocken, *supra* note 103.

²¹⁰ MARIST POLL, *supra* note 208.

²¹¹ *Id.*

²¹² Alex Czartoryski, *10 Animals Hunted (or Nearly Hunted) to Extinction* HUNTERCOURSE.COM: HUNTER SAFETY BLOG (Sept. 28, 2011), <https://www.huntercourse.com/blog/2011/08/10-animals-hunted-or-nearly-hunted-to-extinction/>.

²¹³ Megan Burrow, *New Jersey Becomes First State to Ban Wild Animal Circus Acts*, USA TODAY (Dec. 15, 2018, 2:54 PM), <https://www.usatoday.com/story/news/nation/2018/12/15/noseys-law-new-jersey-becomes-first-ban-wild-animal-circus-acts/2323388002/>.

²¹⁴ Daniel Wood, *SeaWorld Debate Flares: Are Families Souring on Orca Shows?*, CHRISTIAN SCI. MONITOR (Mar. 27, 2015), <https://www.csmonitor.com/USA/Society/2015/0327/SeaWorld-debate-flares-Are-families-souring-on-orca-shows>.

²¹⁵ Nathan Bomey, *SeaWorld to Phase Out Killer Whale Shows, Captivity*, USA TODAY (Mar. 17, 2016, 6:21 AM), <https://www.usatoday.com/story/money/2016/03/17/seaworld-orcas-killer-whales/81900498/>.

²¹⁶ Paterniti, *supra* note 137.

VIII

RARE ANIMALS AND FOOD INSECURITY ISSUES

Finally, some trophy hunters argue that their hunts benefit the locals as the hunters often donate the meat to the local population.²¹⁷ It is true that people in many nations suffer greatly from hunger and that “bush meat” or meat from trophy-hunted animals may provide some short-term relief.²¹⁸ However, consumption of the meat from rare animals can, by the very nature of the problem, not alleviate long-term food insecurity.²¹⁹ With a rapidly increasing population, especially in regions that are also home to some of the rarest species in the world such as Africa,²²⁰ this serious problem of hunger is unfortunately not about to go away. However, it stands to reason that eating animals that are rapidly going extinct cannot solve hunger. Doing so is an unviable, short-time solution to the much bigger problem of poverty. A more sustainable solution to food security must be found. Allowing threatened and endangered animals to be used as a food source sends an entirely wrong signal to both local communities and the world in general that these rare animals are something less—a mere food source—than what they really are: majestic species that form crucial parts of our ecosystems and provide humans around the world with great aesthetic enjoyment and a sense of interconnection between our pasts and our futures as co-species on a planet with increasing competition for space and resources among human and nonhuman species.

CONCLUSION

While the trophy hunting debate is raging, threatened and endangered animals are killed at an alarmingly high rate. At this rate,

²¹⁷ TROPHY, *supra* note 17.

²¹⁸ Sharon Davis, *African Hunger for Bushmeat “Unsustainable,”* SCIDEV.NET (Sept. 8, 2017), <https://www.scidev.net/global/food-security/news/african-hunger-for-bushmeat-unsustainable-.html>; Jordan Calmes, *Bush Meat: When Conservation and Child Nutrition Collide*, NPR (Nov. 22, 2011, 12:10 PM), <https://www.npr.org/sections/thesalt/2011/11/21/142619128/bush-meat-when-conservation-and-child-nutrition-collide>; John G. Robinson & Elizabeth L. Bennett, *Will Alleviating Poverty Solve the Bushmeat Crisis?*, 36 ORYX 332 (2002), <https://doi.org/10.1017/S0030605302000662>.

²¹⁹ See Davis, *supra* note 218; Calmes, *supra* note 218; Robinson & Bennett, *supra* note 218.

²²⁰ Joseph J. Bish, *Population Growth in Africa: Grasping the Scale of the Challenge*, THE GUARDIAN (Jan. 11, 2016), <https://www.theguardian.com/global-development-professionals-network/2016/jan/11/population-growth-in-africa-grasping-the-scale-of-the-challenge>.

elephants, for example, will exist in the wild for only ten to twenty more years.²²¹ As a global community, we simply have no choice: we must outlaw the trophy hunting of endangered species until, at least, the species are brought back from the brink of extinction, if this is even possible. No one wants to see these species go extinct, not even trophy hunters. We have learned from history that we have to be truly conservative in the root sense of the word before it is too late. This principle is, for good reason, enshrined in principles of international environmental law as well. Saving rare animals by killing them is simply not conservation.²²² “[Trophy hunting] does not make sense morally, economically, biologically, or from a conservation-incentive point of view. It is a philosophy that has no place in modern conservation.”²²³ “One day it will be seen for the moral outrage that it is.”²²⁴ The issue is truly as simple and logical as that. Nonetheless, possible doubt about the true conservation value of trophy hunting is still raised as a reason to *continue* the practice. This turns the situation and applicable law on its head: when in doubt, we must—under the precautionary principle of law and for reasons of common sense—err on the side of saving the affected animals. A more modern ecosystemic viewpoint to this, and so many other ecological issues, is necessary. Of course, we must also take effective steps in relation to the major problems of poaching, poverty, education, food security, habitat loss, and corruption. However, it stands to reason that one cannot save rare animals by killing them. Time has come to end the practice of trophy hunting of threatened or endangered species. It is a relic of the past.

²²¹ Bruce Finley, *Wildlife Enforcers Mobilize to Try to Save Elephants*, THE DENVER POST (Sept. 18, 2016, 6:53 PM), <https://www.denverpost.com/2016/09/18/african-elephants-going-extinct-tusks-shrinking/>; Gemma Davis, *Time to Get Real. If Elephants Go Extinct . . . an Entire Ecosystem Will Go with Them*, ONE GREEN PLANET, <http://www.onegreenplanet.org/environment/elephant-extinction-kills-an-ecosystem/> (last visited Dec. 15, 2018).

²²² Flocken, *supra* note 103.

²²³ *Id.*

²²⁴ Morell, *supra* note 96.

